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UNITED NATIONS DECADE OF INTERNATIONAL LAW

Report of the Working Group on the United Nations Decade of International Law

Chairman: Mr. Alfonso María DASTIS (Spain)

1. The General Assembly, in its resolution 46/53 of 9 December 1991, requested the Working Group on the United Nations Decade of International Law to continue its work at the forty-seventh session in accordance with its mandate and methods of work.

2. Pursuant to that resolution, the Sixth Committee, at its 2nd meeting, on 18 September 1992, decided to reconvene the Working Group on the United Nations Decade of International Law and elected Mr. Alfonso María Dastis (Spain) Chairman of the Working Group.

3. The Working Group had before it the report of the Secretary-General on the item (A/47/384 and Add.1), containing an analysis of the replies received in accordance with resolution 46/53, in which the General Assembly had requested the Secretary-General to submit to it at its forty-seventh session a report on the implementation of the programme for the activities to be commenced during the first term (1990-1992) of the Decade, together with views on possible activities for the next term of the Decade. The report further contained a survey of new activities of the United Nations relevant to the progressive development of international law and its codification, prepared pursuant to paragraph 5 of resolution 46/53. The Working Group also had before it the comprehensive list of suggestions with respect to the programme for the United Nations Decade of International Law proposed by States and international organizations (A/C.6/45/L.5, annex II), as well as a note verbale dated 6 October 1992 from the Permanent Representative of China to the United Nations addressed to the Secretary-General (A/C.6/47/6).

4. The Working Group held 14 meetings between 28 September and 6 November 1992, during which it discussed the implementation of the programme of activities for the first term (1990-1992) of the Decade, annexed to General Assembly resolution 45/40 of 28 November 1990, as well as the report of the Secretary-General, as presented below.

5. There was an exchange of views on the nature of the programme for the next two-year term, and the prevailing view was that it should be kept in general terms along the lines of the 1990-1992 programme with necessary adjustments.

I. PROMOTION OF THE ACCEPTANCE OF AND RESPECT FOR THE PRINCIPLES OF INTERNATIONAL LAW

6. There was general agreement that the Decade programme for the next term should once again call upon States to act in accordance with international law. In this connection, the suggestion was made to request the General Assembly to call also upon the organs of the United Nations to continue to act in accordance with international law, particularly the Charter of the United Nations. It was further suggested that States should harmonize their legislation with the international obligations that they have freely accepted.

7. The view was expressed that States, if they have not yet done so, should become parties to international humanitarian law instruments and enhance the implementation of those instruments by all possible means, including the enactment of national legislation.

8. With respect to the question of multilateral treaties which have not achieved wider acceptance or have not entered into force after a considerable lapse of time, the proposal was made that specific treaties in this category be identified and that a study of the ways and means of making them achieve wider acceptance be undertaken. In this connection mention was made of the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1983 Convention on Succession of States in Respect of State Property, Archives and Debts. Reservations were also expressed with respect to the identification of specific treaties for that purpose. A suggestion was made that consideration should also be given to requesting States to review their policies with respect to reservations. The possibility of undertaking a general study on the question of reservations to multilateral treaties was also mentioned.

9. With respect to the question of provision of assistance and technical advice to States to facilitate their participation in the process of multilateral treaty-making, it was proposed that developing countries, in cooperation, where appropriate, with international organizations of a universal or regional character, should identify their needs in this field.

10. It was noted that no replies had been received from States concerning the ways and means of implementing the multilateral treaties to which they are parties. It was consequently suggested that, while continuing to appeal to States to report on this question, such information could more appropriately be requested from international organizations under whose auspices multilateral treaties are adopted.

II. PROMOTION OF MEANS AND METHODS FOR THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES, INCLUDING RESORT TO AND FULL RESPECT FOR THE INTERNATIONAL COURT OF JUSTICE

11. The view was expressed that the title of this section of the programme and the relevant paragraph of the programme should expressly refer to the respect for the decisions of the International Court of Justice. Others expressed the view that the title and paragraph, as written, were fine.

12. On the question of resort to and full respect for the International Court of Justice, reference was made to the proposals of the Secretary-General in his report entitled "An Agenda for Peace" (document A/47/277-S/24111 of 17 June 1992) and outlined in the statements by the Legal Counsel in the Sixth Committee. Statements were made, in this connection, in support of the proposal to authorize the Secretary-General to request an advisory opinion of the Court and to reflect it in the provisions of this section of the Programme. Opposing views were also expressed, however, and it was pointed out that the present system of seeking an advisory opinion of the International Court of Justice was sufficient. The point was made that this complex issue was already being discussed within the framework of the Special Committee on the Charter of the United Nations and on the strengthening of the Role of the Organization. It was also suggested that members of the International Court of Justice be invited to express their views on these issues during the current session of the Sixth Committee.

13. Several suggestions were made in the context of the enhancement of the role of the Court, particularly concerning the acceptance of its compulsory jurisdiction. Thus, it was suggested that the Secretary-General of the United Nations send to States a questionnaire asking them to comment specifically on this issue. Doubts were expressed, however, on the appropriateness of such a questionnaire, and the existence of other means of encouraging States to accept the compulsory jurisdiction of the Court was pointed out. It was proposed, in this connection, that States be urged to include jurisdictional clauses as well as other elements of mechanisms for the peaceful settlement of disputes in multilateral and bilateral agreements. Support was expressed with regard to the Trust Fund established by the Secretary-General to assist States in the peaceful settlement of disputes through the Court, and States were urged to make contributions to it. The usefulness of studying more frequently within the framework of the Sixth Committee the activities of the Court was underlined. The promotion of consultations between the International Court of Justice and national courts was suggested. It was also proposed, in support of the comments by the President of the International Court of Justice in

presenting his report to the plenary, that a review of the working methods of the Court would assist in improving its functioning and thereby promote its use.

14. Emphasis was also placed on the prevention of international disputes and on the more effective use of regional organizations in their settlement. There was also a proposal with respect to the promotion of means and methods for the prevention and peaceful settlement of disputes in the environmental field.

15. There was another proposal urging a wider use of the Permanent Court of Arbitration for the settlement of disputes between States as well as disputes between States and international organizations.

III. ENCOURAGEMENT OF THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

16. The suggestion was made that the question of the protection of cultural property in times of armed conflict be considered. Reference was made, in this connection, to the ongoing discussions within the framework of the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding a comprehensive review of the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict, which, it was felt, should be followed closely by the Sixth Committee.

17. Another suggestion was to consider the question of collective security and, in particular, to elaborate a declaration which would contain the principles governing collective security and guidelines on specific rights and duties of States as well as on the responsibilities of the competent organs of the United Nations, including the Security Council, the General Assembly and the International Court of Justice. Reference was made in this connection to the report of the Secretary-General entitled "An Agenda for Peace" (ibid.), in which he had highlighted the need to enhance the potential of the United Nations for the maintenance of international peace and security and made several proposals to that end. The point was made that these issues could be addressed by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. It was further suggested that a working group be established to consider all recent proposals for the revitalization of the Organization. Reservations were, however, expressed as to whether the consideration of the question of collective security should result in the drafting of a declaration on the subject.

18. There was also the suggestion that the international law concerning the fight against organized crime and international terrorism was ripe for progressive development and codification. In this connection the idea of the establishment of an international criminal court was mentioned. It was also proposed that the development of international norms relating to environmental protection and the further development of humanitarian law would be most suitable topics to be dealt with in the framework of the United Nations Decade of International Law.

19. Clarification was sought from the Secretariat with respect to the publication of the documents of the 1983 and 1986 codification conferences, respectively, on Succession of States in respect of State Property, Archives and Debts, and on the Law of Treaties between States and International Organizations or between International Organizations. The Secretariat replied by indicating the financial constraints which had impeded the publication of the documents, and the solution which has now been found whereby the documents would be published under the principle of the redeployment of unused printing funds of the Office of Legal Affairs for the hiring of editors to work on these documents, although, considering the current financial situation of the Organization, this project might take some time.

IV. ENCOURAGEMENT OF THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

20. This section of the programme for the Decade was generally considered particularly important. There was a widespread view that the popularization of international law was at the heart of the United Nations Decade of International Law and that the activities relating to it should be encouraged. The point was made that the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, and its Advisory Committee, needed to be strengthened, and that institutions outside the United Nations system could assist in the implementation and possible expansion of the Programme.

21. Several delegations observed that a renewed effort to promote international humanitarian law, which is an integral part of international law, should be undertaken. In this context, it was suggested that the support given to the academic and professional institutions mentioned in section IV, paragraph 1, of the annex, as well as the various possibilities of dissemination and training mentioned in paragraphs 4 and 5 of the said section, should take international humanitarian law into account, with a view to promoting its implementation through national legislation.

22. The importance of the teaching of international law at all levels of education was emphasized. The preparation of model curricula was considered particularly useful in that regard. The suggestion was also made that a comprehensive international law course be elaborated under the auspices of the United Nations, with the participation of eminent specialists in various fields of international law.

23. The point was made that an obstacle to the wider dissemination of international law was the absence of a general manual of international law written for non-specialists. It was, however, observed that certain countries offered training courses in public international law for officials of the foreign ministries and other ministries who were not lawyers. The suggestion was made that the United Nations Institute for Training and Research (UNITAR) should organize courses on public international law for United Nations delegates in a more comprehensive manner than had hitherto been the case.

24. Several delegations observed that various seminars had been held in their respective countries on specific topics of international law. They also pointed out the publication of national journals on international law. The activities of the Hague Academy of International Law were also highlighted.

25. Reference was made to a number of round-table discussions which had been organized on the initiative of a group of members of the Sixth Committee, in cooperation with non-governmental organizations such as the American Society of International Law and the World Federalist Movement. The view was expressed that such meetings, which provided the opportunity for an interesting exchange of views, should be continued in the same informal manner which had ensured their success. The possibility of continuing such activities on similar initiatives, taking advantage of the existence of various legal institutions and organizations in New York City, was also considered.

26. The view was further expressed that there should be closer informal contacts between the Sixth Committee on the one hand and the International Law Commission and the International Court of Justice on the other. In this connection, reference was made to an interesting informal round table between members of the Sixth Committee and the President and certain other members of the International Court of Justice during the forty-seventh session of the General Assembly; interest was expressed in having a similar round table in the future.

27. The publication now under way of the summaries of the judgments and advisory opinions of the International Court of Justice in the official languages of the United Nations was warmly welcomed as a useful contribution to the Decade. Interest was expressed in the widest possible dissemination of this publication.

28. With respect to the publication of the United Nations Treaty Series, the following information was provided to the Working Group by the Secretariat, in addition to the information contained in the report of the Secretary-General (A/47/384, para. 114). The publication of Multilateral treaties deposited with the Secretary-General would be available in electronic form. The automated alphabetical and chronological index of all treaties registered with the United Nations, including those which had not yet been included in the published volumes of the Treaty Series, was nearly completed. It was suggested that the Secretariat might examine the possibilities for the publication of other international legal materials produced by the United Nations in electronic form.

V. PROCEDURES AND ORGANIZATIONAL ASPECTS

29. It was noted that meetings of various types might continue to be organized, outside the framework of the United Nations but involving members of permanent missions in New York, to consider matters arising under the Decade.

30. The proposal was made to start preparatory work for a possible five-day Congress on public international law during the next term of the Decade, which could be linked both to the Decade and to the fiftieth anniversary of the United Nations. It was suggested that, in view of the widespread support received by that proposal, reference to it should be made in the draft resolution on the United Nations Decade of International Law. It was further suggested that the experience of the United Nations Commission on International Trade Law (UNCITRAL) Congress might be taken into account. Reservations were expressed, however, about whether a Congress on public international law could address all the issues before the Decade in a responsible, non-politicized manner. With respect to the programme of such a Congress, it was suggested that, out of the five working days, the first four should each be devoted to one of the four main purposes of the Decade and the fifth day should be devoted to an evaluation of the results achieved so far as well as to the consideration of activities for the second half of the Decade and for the beginning of the next century. The view was expressed that funding for the Congress would need to be met from existing resources as well as voluntary funds, including resources that could perhaps be made available through the Trust Fund for the commemoration of the fiftieth anniversary of the United Nations. With respect to the timing of such a Congress, it was suggested that it be held in connection with either the Special Committee on the Charter or the International Law Commission, or during the General Assembly. The point was made that, in any event, the Congress should be linked to the holding of another meeting, for practical purposes and cost-effectiveness. The need to allow for sufficient time for proper preparation of the Congress was emphasized. In this regard, it was proposed that the Congress be held in 1994-1995, since it would thus also serve the purpose of a mid-term review for the Decade. Attention was drawn to the fact that quite a number of activities had already been planned for 1995, as well as for the entire period 1993-1996.

31. Further clarification was sought on the agenda of such a Congress and on the financial implications of the proposal before further discussion of it and before taking a decision on whether to hold a Congress. At the request of the members of the Working Group, the Secretariat made an informal statement on the feasibility and possible modalities of organizing a Congress on public international law.

32. Another suggestion was to welcome the efforts of non-governmental organizations to establish an international committee on the United Nations Decade of International Law, which would include members of the Sixth Committee, members of the International Law Commission, Judges of the International Court of Justice, members of the Secretariat and other

international law experts. The point was made that such a group should not be established as a United Nations body, but that it be kept at an informal level. Serious doubts were however expressed on the establishment of a Committee.

33. The point was made that the establishment of national committees on the implementation of the programme for the Decade was a useful means of coordinating activities at the national level. It was also observed that, in some cases, other forms of effectively promoting and implementing the programme for the Decade had been chosen. The activities of non-governmental organizations in this field should be encouraged.

Annex

PROGRAMME FOR THE ACTIVITIES FOR THE SECOND TERM (1993-1994) OF THE UNITED NATIONS DECADE OF INTERNATIONAL LAW

I. PROMOTION OF THE ACCEPTANCE OF AND RESPECT FOR THE PRINCIPLES OF INTERNATIONAL LAW

1. The General Assembly, bearing in mind that maintenance of international peace and security is the underlying condition for the success of the implementation of the programme for the United Nations Decade of International Law, calls upon States to act in accordance with international law, and particularly the Charter of the United Nations, and encourages States and international organizations to promote the acceptance of and respect for the principles of international law.

2. States are invited to consider, if they have not yet done so, becoming parties to existing multilateral treaties, in particular those relevant to the progressive development of international law and its codification. International organizations under whose auspices such treaties are concluded are invited to indicate whether they publish periodic reports on the status of ratifications of and accessions to multilateral treaties, and if they do not, to indicate whether in their view such a process would be useful. Consideration should be given to the question of treaties which have not achieved wider participation or entered into force after a considerable lapse of time and the circumstances causing the situation.

3. States and international organizations are encouraged to provide assistance and technical advice to States, in particular to developing countries, to facilitate their participation in the process of multilateral treaty-making, including their adherence to and implementation of multilateral treaties, in accordance with their national legal systems.

4. States are encouraged to report to the Secretary-General on ways and means provided for in the multilateral treaties to which they are parties, regarding the implementation of such treaties. International organizations are similarly encouraged to report to the Secretary-General on ways and means provided for by the multilateral treaties concluded under their auspices, regarding the implementation of such treaties. The Secretary-General is requested to prepare a report on the basis of this information and to submit it to the General Assembly.

II. PROMOTION OF MEANS AND METHODS FOR THE PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES, INCLUDING RESORT TO AND FULL RESPECT FOR THE INTERNATIONAL COURT OF JUSTICE

1. States, the United Nations system of organizations and regional organizations, including the Asian-African Legal Consultative Committee, as well as the International Law Association, the Institute of International Law, the Hispano-Luso-American Institute of International Law and other international institutions working in the field of international law, and national societies of international law, are invited to study the means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice, and to present suggestions for the promotion thereof to the Sixth Committee.

2. Taking into account the above-mentioned suggestions and with due regard to the recommendations contained in the report of the Secretary-General entitled "An Agenda for Peace" (A/47/277-S/24111), the Sixth Committee should consider, where appropriate on the basis of a report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, or of the Working Group on the United Nations Decade of International Law, the following questions:

(a) Strengthening the use of means and methods for the peaceful settlement of disputes, with particular attention to the role to be played by the United Nations, as well as methods for early identification and prevention of disputes and their containment;

(b) Procedures for the peaceful settlement of disputes arising in specific areas of international law;

(c) Ways and means of encouraging greater recognition of the role of the International Court of Justice and its wider use in the peaceful settlement of disputes;

(d) Enhancement of cooperation of regional organizations with the United Nations system of organizations in respect of the peaceful settlement of disputes;

(e) Wider use of the Permanent Court of Arbitration.

III. ENCOURAGEMENT OF THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

1. International organizations, including the United Nations system of organizations and regional organizations, are invited to submit to the Secretary-General of the United Nations summary information regarding the programme and results of their work relevant to the progressive development of international law and its codification, including their suggestions for future work in their specialized field, with an indication of the appropriate forum to undertake such work. Similarly, the Secretary-General is requested to

prepare a report on the relevent activities of the United Nations, including those of the International Law Commission. Such information should be presented in a report by the Secretary-General to the Sixth Committee.

2. On the basis of the information mentioned in paragraph 1 of the present section, States are invited to submit suggestions for consideration by the Sixth Committee and, as appropriate, recommendations. In particular, efforts should be made to identify areas of international law which might be ripe for progressive development or codification.

3. The Sixth Committee should study, taking into account General Assembly resolution 684 (VII) of 6 November 1952 (annex II to the rules of procedure of the General Assembly), its coordinating role with respect, inter alia, to the drafting of provisions of a legal nature and the consistent use of legal terminology in international instruments adopted by the General Assembly. States are invited to present proposals in this regard to the Sixth Committee.

4. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization should continue to study possible measures to strengthen the United Nations system for the maintenance of international peace and security. In that context, the Special Committee should take note of the Secretary-General's report entitled "An Agenda for Peace" in the light of the debate within the United Nations, particularly within the General Assembly.

IV. ENCOURAGEMENT OF THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

1. The Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law should, in the context of the Decade, continue to formulate, as appropriate and in a timely manner, relevant guidelines for the Programme's activities and report to the Sixth Committee on the activities carried out under the Programme in accordance with such guidelines. Special emphasis should be given to supporting academic and professional institutions already carrying out research and education in international law, as well as to encouraging the establishment of such institutions where they might not exist, particularly in the developing countries. States and other public or private bodies are encouraged to contribute to the strengthening of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

2. States should encourage their educational institutions to introduce courses in international law for students studying law, political science, social sciences and other relevant disciplines; they should study the possibility of introducing topics of international law in the curricula of schools at the primary and secondary levels. Cooperation between institutions at the university level amongst developing countries, on the one hand, and their cooperation with those of developed countries on the other, should be encouraged.

3. States should consider convening conferences of experts at the national and regional levels in order to study the question of preparing model curricula and materials for courses in international law, training of teachers in international law, preparation of textbooks on international law and the use of modern technology to facilitate the teaching of and research in international law.

4. States, the United Nations system of organizations and regional organizations should consider organizing seminars, symposia, training courses, lectures and meetings and undertaking studies on various aspects of international law.

5. States are encouraged to organize special training in international law for legal professionals, including judges, and personnel of ministries of foreign affairs and other relevant ministries as well as military personnel. The United Nations Institute for Training and Research, the United Nations Educational, Scientific and Cultural Organization, the Hague Academy of International Law, regional organizations and the International Committee of the Red Cross are invited to continue cooperating in this respect with States.

6. Cooperation among developing countries, as well as between developed and developing countries, in particular among those persons who are involved in the practice of international law, for exchanging experience and for mutual assistance in the field of international law, including assistance in providing textbooks and manuals of international law, is encouraged.

7. In order to make better known the practice of international law, States, international and regional organizations should endeavour to publish, if they have not done so, summaries, repertories or yearbooks of their practice.

8. States and international organizations should encourage the publication of important international legal instruments and studies by highly qualified publicists, bearing in mind the possibility of assistance from private sources.

9. Other international courts and tribunals, including the European Court of Human Rights and the Inter-American Court of Human Rights, are invited to disseminate more widely their judgements and advisory opinions, and to consider preparing thematic or analytical summaries thereof.

10. International organizations are requested to publish treaties concluded under their auspices, if they have not yet done so. Timely publication of the United Nations Treaty Series is encouraged and efforts directed towards adopting an electronic form of publication should be continued. Timely publication of the United Nations Juridical Yearbook is also encouraged.

V. PROCEDURES AND ORGANIZATIONAL ASPECTS

1. The Sixth Committee, working primarily through its Working Group and with the assistance of the Secretariat, will be the coordinating body of the programme for the United Nations Decade of International Law. The question of the use of an intra-sessional, inter-sessional or existing body to carry out specific activities of the programme may be considered by the General Assembly.

2. The Sixth Committee is requested to continue to prepare the programme of activities for the Decade.

3. The Secretariat, on the basis of informal consultations with the members of the Sixth Committee, should draw up a preliminary operational plan for a possible United Nations Congress on Public International Law, based on the proposal that the Congress be held in 1994 or 1995, and within existing resources and assisted by voluntary contributions, and submit it to the Sixth Committee for consideration by general agreement at the forty-eighth session of the General Assembly.

4. All organizations and institutions referred to and invited to submit reports to the Secretary-General under sections I to IV above are requested to submit interim or final reports preferably at the forty-eighth session but not later than the forty-ninth session of the General Assembly.

5. States are encouraged to establish, as necessary, national, subregional and regional committees which may assist in the implementation of the programme for the Decade. Non-governmental organizations are encouraged to promote the purposes of the Decade within the fields of their activities, as appropriate.

6. It is recognized that, within the existing overall level of appropriations, adequate financing for the implementation of the programme for the Decade is necessary and should be provided. Voluntary contributions from Governments, international organizations and other sources, including the private sector, would be useful and are strongly encouraged. To this end, the establishment of a trust fund to be administered by the Secretary-General might be considered by the General Assembly.